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84-717

No. _____

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1984

RICHARD D. LUSSY,
Plaintiff/Appellant,

— v —

MARK S. DAVIDSON, and the law firm of WILLIAMS, LANZA, KASTNER & GIBBS; ARDEN C. McCLELLAND and the law firm of McCLELLAND LAW OFFICES, P.C.,
Defendants/Respondents.

On Appeal from the Supreme Court of Montana

Appellant's Response to Motion to Dismiss and/or Affirm as Appropriate

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Plaintiff/Appellant's Response to Defendants/Respondents

Motion to Dismiss and/or Affirm as Appropriate, Point for Point

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I.

INTRODUCTION

Respondents lawyers generally state that this appeal does not present a federal question and that it was neither timely nor properly raised, all without judicial authority and judicial cause for relief.

II.

STATEMENT OF THE CASE

Appellant first filed this malpractice case in King County to ascertain a key witnesses video-taped deposition and for filing subpoena duces tecum on both then Seattle-King County defendants/respondents.

Lawyers for the respondents admit that the appeal notice to this court was timely filed. They also state that the federal question was never raised during the District Court and Montana State Supreme Courts proceedings. The reason for this was simply based upon "truth" as the defense for making the defamatory statement. This defamatory statement again was...The fact of whether or not, the Estate of Ben Gwynn was being defrauded as the Lussys were being defrauded (10/8/83 Memorandum in Support of Plaintiff's Motion for Summary Judgment, page 8, 2nd paragraph). Wade J. Dahood was the lawyer in charge of both legal counsel for the investment entity and of the Estate of Ben Gwynn (also an investor of the investment entity). Again, the Plaintiff/Appellant only concerned himself with whether the defamatory remark (above referenced) made was true or false. The Plaintiff/Appellant has repeatedly proved with all pertinent records admitted as evidence to the court before motion for summary judgment, demonstrated $414,468.60 in missing or stolen funds & property from the estate. This was accomplished by merely comparing the (1) Ben Gwynn's financial statement totalling $1,243,428 in Net Worth as stated by defendant/respondent Mark Davidson in his deposition of 9/27/83, page 35, lines 1 through 17, page 46, lines 20 through 25 and page 47, lines 1 through 21; with (2) Ben Gwynn's Inventory and Appraisement of Probate No. 1834 indicating a total value of all property of $830,959. Mark Davidson's deposition of 9/27/83, page 24, line 25 and page 25, lines 1 through 9 demonstrate the Probate File was entered as an exhibit for Summary Judgment before the judgment on liability against the Plaintiff/Appellant. Again, the trugh of the statement is borne out in the $414,468.60 in missing or stolen property.

III.

THERE IS SUBSTANTIAL FEDERAL QUESTIONS

Lawyers for Defendants/Respondents is mistaken citing 28 U.S.C. Section 1257 as it is 28 U.S.C. Section 1331 and 42 U.S.C. Section 1983 and 1985(b) as pertinent federal jurisdictional questions. Again in a defamation action, the truth is the sole defense with the Plaintiff/Appellant recognizing corresponding responsibilities.

Lawyers for Defendants/Respondents incorrectly state that Criminal Proceedings only have the right to effective assistance of counsel. The defense counsel apparently advocate ineffective assistance of legal counsel in all civil proceedings and without liability. Again this is a substantial federal issue.

Federal Question is centered upon *United States v. Cronic, Syllabus, Certiorari* to the United States Court of Appeals for the Tenth Circuit, No. 82-660. Argued 1/10/84, Decided may 14, 1984. 675 F2d. 1126, reversed and remanded, cited in 44 CCH S.Ct.Bull.P. B2695.

Additionally, Rule 15(1)(d) is complied with, by demonstrating a valid substantial federal question.

Appellant advocates competency and adequately effective legal counsel in civil proceedings. Granted, the Sixth Amendment on its face concerns itself with criminal trials. **The substantial federal question here is...does legal counsel have to be competent and adequate during civil proceedings. And does "truth" play a role in determining adequate and competent legal counsel, during civil proceedings.**

IV.

CONCLUSION

The present appeal should be Affirmed as Appropriate.

DONE, dated and mailed this 20th day of July, 1984.

Certified by the undersigned and sent to Ronald F. Waterman of lawyers for Defendants/Respondents, Gough, Shanahan, Johnson & Waterman, 301 First National Bank Building, P.O. Box 1715, Helena, Montana 59624, first class postage prepaid.

It is further certified that all parties required to be served have been served and the list of such parties is set forth above.

By_____

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Attorney Plaintiff/Appellant Pro Se